IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 74 OF 2007

Shri Gajendranath R. Usgaonkar,
State President of Lok Janshakti
Party, having its Office at 31st
January Road, Near General Post
Office, Panaji, Goa. ... Petitioner

versus

1. Union of India,
through the Ministry of
Home Affairs, Government of
India, having its Office at
North Block, New Delhi.

2. Election Commission of India,
represented by the Secretary
to Election Commission of
India, having its office at
Nirvachan Sadan, Ashoka Road,
New Delhi – 1.

3. Delimitation Commission of India,
represented by its Secretary
Delimitation Commission of India,
having its office at
Nirvachan Sadan, Ashoka Road,
New Delhi-1.

4. The Chief Electoral Officer
of State of Goa, having his
Office at Altinho, Panaji, Goa.

5. State of Goa,
Through the Chief Secretary of
Government of Goa, having his
office at Secretariat, Porvorim,
Goa. ... Respondents

Mr. Vivek Rodrigues, Advocate for the Petitioner.

Mr. C. A. Ferreira, Assistant Solicitor General for the Respondent No.1.

Mr. S. S. Kantak, Advocate General with Mr. M. Salkar, Additional Government Advocate for the Respondent No.5.

CORAM : S. A. BOBDE &
N. A. BRITTO, JJ.

DATE : 6TH MARCH, 2007.

ORAL ORDER

By this petition, the petitioner has prayed for a writ of mandamus to the respondent no.2, the Election Commission of India to provide a revised electoral roll as on January, 2007 in accordance with Order No.5 issued by the Delimitation Commission of India under sub-section(1) of Section 10 of the Delimitation Act, 2002 hereinafter referred to as the Act for the State of Goa. The petitioner has further prayed for a direction to place the final order of the Delimitation Commission of India before the State Legislative Assembly which is to meet on 22-1-2007. Both the prayers are made on the basis that upon the delimitation of the constituencies by the Delimitation Commission under the Act the readjusted constituencies have already come into existence.

2. We have heard the learned Counsel for the petitioner, the learned Assistant Solicitor General of India and the learned Advocate General for the State of Goa. We do not propose to deal with all the contentions raised on behalf of the petitioner in view of the admitted fact that the President of India has not

issued an order specifying that the readjustment of territorial constituencies shall take place as contemplated by the second proviso to sub-article (3) of Article 170 of the Constitution of India and since in our view such an order is necessary before the readjustment of constituencies can be said to have taken effect. Article 170 of the Constitution of India reads as follows:-

> **170. Composition of the Legislative Assemblies.--**
> (1) Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.
>
> (2) For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State".
>
> *Explanation*.- In this clause, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:
>
> Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the

relevant figures for the first census taken after the year [2026] have been published, be construed as a reference to the [2001] census.

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly:

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the Legislative Assembly may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year [2026] have been published, it shall not be necessary to readjust --

(i) the total number of seats in the Legislative Assembly of each

State as readjusted on the basis of the 1971 census; and

(ii) the division of such State into territorial constituencies as may be readjusted on the basis of the [2001] census; under this clause.

3. According to the learned Counsel for the petitioner the Delimitation Act, 2002 has come into force after it received the assent of the President dated 3-6-2002. Under Section 9 of the Act the Commission has published its orders determining the delimitation of Parliamentary Constituencies and the delimitation of Assemblies of its States on the basis of the census figures, at the census held in 1991. The petitioner relies on the Order No.5 issued by the Delimitation Commission of India in relation to the State of Goa under sub-section(1) of Section 10 of the Delimitation Act in respect of the delimitation of Parliamentary Constituencies and Assemblies in the State of Goa. It is the petitioner's contention that such an order for delimitation of the Constituencies in the State of Goa having been issued, the Assembly Constituencies for the State of Goa stand reconstituted according to the Order No.5 and therefore the forthcoming elections to the Goa State Assembly should be held in accordance with Order No.5 i.e. after the readjustment of the Assembly Constituencies as contemplated by the Delimitation Commission in Order No.5 on the basis of the population ascertained in the figures arrived at in the year 1991 census. The learned Counsel for the petitioner relies on sub-section(2) of Section 10 which reads as

follows:-

> "Upon publication in the Gazette of India, every such order shall have the force of law and shall not be called in question in any court".

4. He further relies on Section 12 of the Delimitation Act which repeals the 1972 Act.

5. We find no merit in the contention on behalf of the petitioner at this stage. It is true that under the Delimitation Act of 2002 the Delimitation Commission has issued Order No.5 fresh delimiting the Constituencies in the State of Goa afresh and that the Order by which it is done has been notified in the Official Gazette of the Government of Goa vide Exh.D to the petition. However, this does not ipso facto bring the order of the Delimitation of the Commission into force and does not bring the readjusted constituencies into existence. The Delimitation Act, 2002 requires the Commission to act, having regard to the provisions inter alia of Article 170 of the Constitution of India vide Section 8 thereof. Article 170(3) of the Constitution of India reads as follows:-

> "**170(3)** Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be

readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly:

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the Legislative Assembly may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year [2026] have been published, it shall not be necessary to readjust--

(i) the total number of seats in the Legislative Assembly of each State as readjusted on the basis of the 1971 census; and

(ii) the division of such State into territorial constituencies as may be readjusted on the basis of the [2001] census; under this clause.

6. Sub-Article(3) provides that the total number of seats and the division of each State in the territorial Constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine. The authority designated for carrying out such readjustment by Parliament is the Delimitation Commission constituted under the Delimitation Act of 2000 enacted by Parliament. That authority has issued Order No.5. Therefore, this is a case where the second proviso to sub-article(3) would clearly apply for considering whether the readjustment has taken effect. Clearly, the second proviso to sub-article(3) provides that the readjustment shall take effect from such date as the President may by order specify and until such readjustment takes effect any election may be held on the basis of the existing territorial Constituencies. Admittedly, the President of India has not issued any order specifying that such readjustment shall take effect. It is therefore of no avail of the petitioner to contend that by the mere issue of Order No.5 by the Delimitation Commission in exercise of its powers under sub-section(1) of Section 10 of the Delimitation Act, 2002 the Constituencies in the State of Goa stand readjusted and therefore this Court should direct the respondent no.2 to hold elections in accordance with the fact of Delimitation Constituencies.

7. We are of the view that the readjustment of Constituencies in Order No.5 issued by the Delimitation Commission cannot be said to have taken effect in the absence of an order giving effect to such delimitation by the President of India as contemplated by sub-article(3) of the second proviso to Article 170. In

this view of the matter, we see no merit in the other prayer that is a prayer for a mandamus to direct the State of Goa to place Order No.5 of the Delimitation Commission before the State Legislative Assembly of Goa because of Section 10, sub-section(3). It is not necessary for the State to place such order at this stage before the Legislative Assembly in the absence of any order by the President of India under second proviso to sub-article(3) of Article 170. In our view, it would not serve any purpose at this stage. There is therefore no merit in this petition which is hereby dismissed.

S. A. BOBDE, J.

N. A. BRITTO, J.

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